

CHAPTER 10.

Overall Annual DBE Goal

As part of implementing the Federal DBE Program, GDOT must set an overall goal for DBE participation in FHWA-funded contracts. The Final Rule, which made certain changes to the Federal DBE Program effective February 28, 2011, requires the overall goal to pertain to a three-year period. GDOT set an overall DBE goal of 12 percent for the three year period through FY 2012.

Federal regulations (49 CFR Part 26.45) outline a two-step process for setting the overall goal:

- Step 1: Establishing a base figure; and
- Step 2: Making any needed adjustment to the base figure.

GDOT will explain each step and its choice of an overall DBE goal for FY 2013-FY 2015 in a Goal and Methodology document it will prepare and submit to FHWA prior to this three-year period. The information below can assist GDOT when making these decisions.

Step 1: Establishing a Base Figure

As presented in the Chapter 5 availability analysis, minority- and women-owned firms currently or potentially certified as DBEs would be expected to receive 19.8 percent of prime contract and subcontract dollars for GDOT's FHWA-funded contracts based on their relative availability for that work.

GDOT should consider 19.8 percent as the base figure for its overall goal for DBE participation if the types of FHWA-funded contracts for the time periods covered by future goals will be similar to FHWA-funded contracts from 2009 through June 2011.

If, for example, the mix of work between construction- and engineering-related contracts will differ in the future, GDOT can apply new weights to develop a new base figure. (As shown in Figure 10-1 on the following page, the current weight is 90 percent for construction contracts and 10 percent for engineering-related contracts.) Similarly, GDOT could consider adjusting the base figure if the future geographic mix of contracts were to differ substantially from the 2009 through June 2011 time period. MBE/WBE availability was several percentage points higher for contracts in North Georgia and the Atlanta Metropolitan Area than in Middle Georgia and South Georgia. In addition, these results are based on a time period that includes a number of projects funded through the American Recovery and Reinvestment Act. When considering an overall DBE goal, GDOT should review how its future mix of FHWA-funded projects may differ from the 2009 through June 2011 time period.

GDOT must develop its goal for DBE participation by including all DBE groups, and should not subdivide the goal by DBE group.¹ (The data BBC presents by DBE group is to document how the overall DBE goal might be calculated.)

¹ See 49 CFR Section 26.45 (h).

The 19.8 percent base figure shown in Figure 10-1 is higher than GDOT's current 12 percent overall DBE goal. However, GDOT only included certified DBEs in the base figure calculations for its current overall DBE goal. BBC also counted minority- and women-owned firms that possibly could be certified as DBEs but are not currently certified.² BBC also had more detailed information concerning available firms and performed a more sophisticated contract-by-contract analysis of availability than analyses performed in the past.

Figure 10-1.
Construction and engineering components of base figure for GDOT FHWA-funded transportation contracts

Note:

Weights are based dollars of FHWA-funded contracts for 2009–June 2011.

Source:

BBC Research & Consulting.

Potential DBEs	Availability percentage		
	Construction	Engineering	Total
African American-owned	14.2 %	9.2 %	13.7 %
Asian-Pacific American-owned	1.3	1.3	1.3
Subcontinent Asian American-owned	0.1	3.5	0.4
Hispanic American-owned	0.1	1.6	0.2
Native American-owned	0.1	0.0	0.1
WBE (white women-owned)	4.1	3.1	4.0
Total potential DBEs	19.9 %	18.7 %	19.8 %
Sector weight	90 %	10 %	

Step 2: Making Any Needed Adjustment to the Base Figure

GDOT can make upward or downward adjustments to the base figure as it determines its overall DBE goal. It does not have to make a step 2 adjustment as long as it considers appropriate factors and explains its decision in its Goal and Methodology document prepared for FHWA.

The Federal DBE Program outlines factors that recipients of USDOT funds must consider when assessing whether to make a “step 2” adjustment to the base figure:³

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant data.

BBC completed an analysis of each of the step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information BBC examined was not as easily quantifiable, but is still relevant as GDOT assesses whether or not to make a step 2 adjustment.

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. USDOT Tips for Goal Setting suggests that agencies examine data on past participation of DBEs on USDOT-funded contracts, and choose the median level of annual participation for the years examined as the measure of past participation. “Your goal setting process will be more accurate if you use the median (instead of the average or mean) of your past

² Consistent with USDOT guidance, as discussed in Chapter 5.

³ 49 CFR Section 26.45.

participation to make your adjustment because the process of determining the median excludes all outliers (abnormally high or abnormally low) past participation percentages.”⁴

Median annual DBE participation based on GDOT reports for FY 2007 through FY 2011 was 10.4 percent.⁵ BBC’s independent analysis of 2009 through June 2011 FHWA-funded contracts indicates 10.1 percent DBE utilization (based on aggregate utilization over this period). The two approaches yield similar estimates of past DBE participation in FHWA-funded contracts. Figure 10-2 presents these estimates.

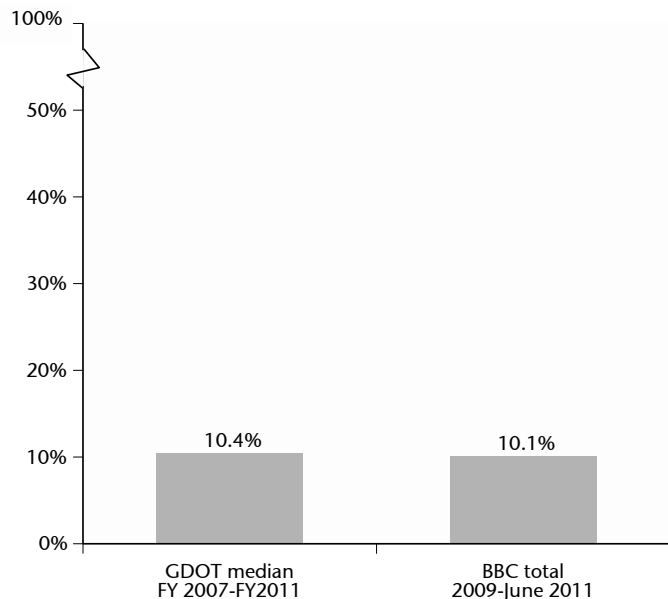
Figure 10-2.
Estimates of DBE participation on
FHWA-funded contracts

Note:

Number of FHWA-funded contracts/subcontracts analyzed by BBC is 5,390. For more detail, see Figure K-3 in Appendix K.

Source:

BBC Research & Consulting from GDOT’s Goal and Methodology, DBE participation reports to FHWA and GDOT contract data.



2. Information related to employment, self-employment, education, training and unions. Chapter 4 of the report summarizes information concerning local marketplace conditions for minorities and women. Detailed quantitative analyses of the Georgia marketplace are presented in Appendices D through G. BBC’s analysis suggests that there are certain barriers affecting entry, advancement and business ownership for minorities and women in the Georgia construction and engineering industries:

- Taken together, this information suggests that barriers to employment, self-employment and education exist for certain minority groups and women in Georgia.
- It follows that such barriers may have affected the relative availability of minority- and women-owned firms to perform Georgia work.

⁴ Section III (A)(5)(c) in USDOT. Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program. <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

⁵ Beginning with FY 2007 and ending in FY 2011, GDOT reported DBE dollars awarded as a percentage of total dollars awarded for FHWA-funded contracts of 13.3%, 11.8%, 9.3%, 10.4% and 9.8% based upon its Goal and Methodology (for earlier years) and DBE Participation Reports submitted to FHWA for FY 2009 through FY 2011.

It may not be possible to properly quantify the extent to which barriers to employment, education and training may have depressed the relative number of minority- and women-owned firms in the local industry. However, the effect of disparities in self-employment on availability can be quantified, as discussed below.

Quantitative information on self-employment. Through regression models, BBC investigated whether race, ethnicity or gender influenced rates of business ownership among Georgia workers after accounting for the effects of several neutral factors.⁶ Chapter 4 of the report summarizes BBC's analyses and Appendix F provides detailed results of the regression models.

BBC identified statistically significant disparities in business ownership rates for African Americans, Hispanic Americans and women working in the Georgia construction industry in 2007-2009. BBC calculated the impact on the base figure if African Americans, Hispanic Americans and white women owned businesses at the same rates as similarly situated non-minorities (and white men). These “but for” calculations are presented in Figure 10-3. BBC's calculations include the same categories of contracts used when determining the base figure (i.e., construction and engineering). BBC made a “but for” calculation for construction, and then weighted the results with the component of the base figure for engineering based on GDOT's dollars of FHWA-funded contracts for those types of contracts. The results indicate an overall DBE goal of 26.3 percent if GDOT were to make an upward step 2 adjustment based on this information.

Calculations are explained below and in Figure 10-3. The columns of Figure 10-3 represent the following:

- a. **Current availability.** Column (a) shows the current availability of potential DBEs as presented in Chapter 5. Each row shows the percentage of firms that are minority- or women-owned and are either currently DBE-certified or appear to be “small” (within the revenue size standards currently eligible for DBE certification). Combined, the information for construction and for engineering equals the 19.8 percent base figure for the overall DBE goal discussed in Chapter 5.

The row “majority and small MBE/WBEs” refers to firms that do not appear to be eligible for DBE certification.

- b. **Disparity indices for business ownership.** Column (b) presents disparity indices related to business ownership for the different racial/ethnic/gender groups. See Chapter 4 and Appendix E for an explanation of the regression models from which BBC formulated these disparity indices.
- c. **Availability after initial adjustment.** Column (c) presents initial availability estimates after adjusting for statistically significant disparities in business ownership. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
- d. **Availability after scaling to 100%.** Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the estimates equals 100 percent. BBC re-scaled the adjusted availability estimates by taking each group's adjusted availability estimate in column (c) and

⁶ BBC examined U.S. Census data on business ownership rates using methods similar to analyses examined in the court cases involving state departments of transportation in California, Illinois and Minnesota.

dividing it by the sum of availability estimates shown under “Total firms” in column (c) and multiplying by 100. For example, for African American-owned construction firms, the calculation is $(18.7\% \div 107.8\%) \times 100 = 17.3\%$.

- e. **Components of goal.** Column (e) shows the component of the total goal attributed to the adjusted MBE/WBE availability in each procurement area. BBC calculated each component by taking the total DBE availability estimate shown under “Total small minority and female” in column (d) and multiplying it by the proportion of total FHWA-funded contract dollars for construction and engineering (90% for construction and 10% for engineering-related contracts). The study team used the 25.7 percent shown under “Total small minority and female” in column (d) for construction and multiplied it by 90 percent for a result of 24.4 percent. The column (d) figure for engineering (18.7%) was multiplied by its weight of 10 percent for a result of 1.9 percent. The values in column (e) were then summed to equal the total adjusted DBE availability (last row of Figure 10-3). The sum is 26.3 percent.

From the calculations in Figure 10-3, as described above, the potential step 2 adjustment indicates an overall DBE goal of 26.3 percent.

Figure 10-3.
Potential adjustment to base figure for overall DBE goal

	a.	b.	c.	d.	e.
Business ownership	Current availability	Disparity index for business ownership	Availability after initial adjustment*	Availability after scaling to 100%	Components of goal**
Construction					
African American	14.2 %	76	18.7 %	17.3 %	
Asian-Pacific American	1.3	no adjustment	1.3	1.2	
Subcontinent Asian American	0.1	no adjustment	0.1	0.1	
Hispanic American	0.1	50	0.2	0.2	
Native American	0.1	no adjustment	0.1	0.1	
White women	<u>4.1</u>	56	<u>7.3</u>	<u>6.8</u>	
Total small minority and female	19.9 %		27.7 %	25.7 %	24.4 %
Majority and large MBE/WBE	<u>80.1</u>		<u>80.1</u>	<u>74.3</u>	
Total firms	100.0 %		107.8 %	100.0 %	
Engineering					
Total small minority and female	18.7 %	no adjustment	18.7 %	18.7 %	1.9 %
Majority and large MBE/WBE	<u>81.3</u>		<u>81.3</u>	<u>81.3</u>	
Total firms	100.0 %		100.0 %	100.0 %	
Total small minority and female after adjustments and weighting					26.3 %

Note: * Initial adjustment is calculated as current availability divided by the disparity index.

** Components of goal calculated as value after adjustment and scaling to 100% multiplied by percentage of total FHWA-funded contract dollars in that category (construction is 90%, engineering is 10%).

*** Small minority and female firms includes those firms that BBC surveyed and who reported annual revenues below the Federal DBE revenue caps. MBE/WBE firms reporting annual revenues over DBE limits are not included in this total. Totals also do not include firms that have applied for DBE certification and been denied and firms that have graduated from the Federal DBE Program.

Source: BBC Research & Consulting.

3. Statistical disparities in the ability of DBEs to get financing, bonding and insurance.

BBC analyzed access to financing, bonding and insurance. There is evidence that minority- and women-owned firms do not have the same access to capital as majority-owned firms. Any barriers in access to capital, bonding and insurance would affect the opportunities for minorities and women to form and successfully operate construction and engineering-related firms.

- As discussed in Chapter 4, because firms typically must have working capital, bonding and insurance to be awarded and perform GDOT construction prime contracts, any greater barriers to obtaining these business inputs for minorities and women would place these firms at a disadvantage in obtaining Department construction contracts.
- Similarly, if minority- and women-owned engineering and related firms face disadvantages obtaining financing and insurance, they may have disadvantages obtaining GDOT engineering-related contracts. Insurance is a requirement for obtaining Department work and sufficient working capital is a practical necessity to perform GDOT contracts.

Unequal access to financing, bonding and insurance may adversely affect the current availability of minority- and women-owned firms to perform GDOT work, which adds to the evidence for an upward Step 2 adjustment. However, the impact on the base figure could not be explicitly quantified. Chapter 4 summarizes this information; Appendix G presents detailed quantitative analyses.

4. Other relevant data. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make a step 2 adjustment to the base figure.⁷ One factor BBC examined was the relative success of minority- and women-owned firms in the local transportation contracting industry. There is evidence of disparities for certain groups of minority- and women-owned firms. Chapter 4 summarizes this information and Appendix F presents detailed quantitative analyses. As with access to financing, bonding and insurance, quantification of how these factors affect the base figure was not possible.

Appendix L provides comments from the public about the level of overall DBE goal. These comments were solicited as part of the disparity study process after release of the draft disparity study report. The draft report included the base figure and Step 2 analyses presented here. A number of individuals and groups indicated that GDOT should increase its overall DBE goal to a figure higher than 12 percent (some recommended as high as 30 percent). Some comments indicated that GDOT should not increase its overall DBE goal.

⁷ 49 CFR Section 26.45.

Summary of information for step 2 analysis. BBC's in-depth analysis of each factor outlined in the Federal DBE Program suggests that GDOT consider one of the following options concerning a step 2 adjustment.

Option 1 – making an upward adjustment. Over the long-term, there are reasons that GDOT might consider a higher overall goal than the 19.8 percent base figure.

- If GDOT were to make an upward adjustment, it might consider the 26.3 percent figure for DBE participation after adjusting current availability for business ownership rates to reflect “your determination of the level of DBE participation you would expect absent the effects of discrimination.”⁸ Figure 10-3, earlier in this chapter, presents these calculations.
- Analyses of access to capital and other factors summarized above also support an overall goal higher than 19.8 percent.
- As emphasized in the USDOT Tips for Goal Setting, “If the evidence suggests that an adjustment is warranted, it is critically important to ensure that there is a rational relationship between the data you are using to make the adjustment and the actual numerical adjustment made.”⁹ The calculations that reflect disparities in business ownership rates appear to provide such a rational relationship.

Option 2 – making a downward step 2 adjustment. As explained above, one factor GDOT must consider is the volume of work DBEs have performed in recent years. GDOT DBE participation reports for FY 2007 through FY 2011 indicated median annual DBE participation of 10.4 percent for these years. This level of participation may represent a minimum demonstration of “current capacity of DBEs to perform work,” which is lower than the 19.8 percent base figure. (BBC measured total DBE participation of 10.1 percent for FHWA-funded contracts for 2009 through June 2011, a figure close to the 10.4 percent median value.)

- USDOT “Tips for Goal-Setting” suggest that the base figure can be averaged with the median past DBE participation to make the step 2 adjustment.
- If GDOT chose this approach, the 19.8 percent base figure would be averaged with the 10.4 percent median level of past attainment for an adjusted DBE goal of 15.1 percent. (For simplicity, GDOT could round this figure to 15 percent, consistent with what it has done when setting an annual DBE goal in the past.)

Option 3 – making no step 2 adjustment. USDOT regulations clearly state that an agency such as GDOT is required to review a broad range of information when considering whether a step 2 adjustment is necessary. GDOT, however, is not required to make such an adjustment as long as it can explain what factors were considered and why no adjustment is warranted.

⁸ 49 CFR Section 26.45 (b).

⁹ USDOT. Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program. <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.